



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: MNSD, MNDC, RPP

For the landlord: MNSD, MNR, MNDC, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenants applied for a return of their security deposit and pet damage deposit, a monetary order for money owed or compensation for damage or loss, and an order requiring the landlord to return the tenants’ personal possessions.

The landlords applied for authority to retain the tenants’ security deposit and pet damage deposit, a monetary order for unpaid rent and for money owed or compensation for damage or loss, and for recovery of the filing fee.

The parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other’s evidence.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Are the tenants entitled to an order requiring the landlords to return their security deposit, further monetary compensation, and an order requiring the landlord to return the tenants' personal possessions?
2. Are the landlords entitled to retain the tenants' security deposit, further monetary compensation and to recover the filing fee?

Background and Evidence

The tenancy agreement shows that this tenancy began on July 1, 2013, that monthly rent was \$750, and that the tenants paid a security deposit of \$375 and a pet damage deposit of \$50.

The tenant submitted that they vacated the rental unit on January 20, 2014, and the landlords agreed.

*Tenants' application-*

The tenants' monetary claim is \$375. In support of their application, the tenant submitted that they did vacate the rental unit as stated above, but did not empty their contents in the shed. By the time they returned on January 28, 2014, to collect the rest of their personal property, the landlords had changed the locks to the rental unit and the shed.

The tenant submitted that they did not notify the landlord that they were vacating due to receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and because the landlords changed the locks to the rental unit, were not allowed access to clean.

The tenant ultimately said that all he wanted was his personal property, and not monetary compensation.

The tenants' relevant documentary evidence was a copy of the 10 Day Notice.

In response, the landlord submitted that the tenant kept in communication, with assurances that the tenants would pay the unpaid rent, but never did so. When the landlords attended the rental unit, the unit was completely abandoned by the tenants as

all their personal property was removed, according to the landlords. The landlord submitted that because the rental unit was abandoned, they had to change the locks to secure the premises as the tenants failed to return the keys.

The landlords also submitted that they looked at the contents of the shed, and the tenants only left a box of photographs, which the landlords said that the tenants could have at any time.

*Landlords' application-*

The landlords' monetary claim as listed in their application is \$1467, comprised of carpet cleaning and damage of \$292, unpaid rent of \$750, and the security deposit of \$375.

In support of their application, the landlords submitted that the tenants did not pay rent for January 2014, and thus the reason a 10 Day Notice was issued to the tenants. The landlords submitted that rent for January has never been paid.

The landlords further submitted that the carpet was filthy at the end of the tenancy, having a urine smell and feces on the carpet. The landlords submitted that lost their receipt for the carpet cleaning, and was assured by the carpet cleaning company that they would send a new receipt, but as of the day of the hearing, it had not been received.

As to the state of the rental unit, the landlords submitted that the condition of the rental unit at the end of the tenancy was unbearable, and required many hours of cleaning and garbage hauling.

The landlords' relevant documentary evidence included a written statement from a neighbour of the rental unit, concerning events at the rental unit during mid January 2014, a receipt for the landfill, the 10 Day Notice, dated January 10, 2014, the tenancy agreement, and photographs of the state of the rental unit.

In response, the tenant agreed that he had not paid rent for January, for the reason he did not owe it after receiving the 10 Day Notice.

As to the carpet cleaning, the tenant submitted that he was denied access to clean the rental unit at the end of the tenancy.

As to the state of the rental unit, the tenant submitted that the rental unit was not clean when they moved in, and that \$50 was taken off the first month's rent due to the unclean state.

The landlord responded that the locks to the rental unit were not changed until January 20.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

### *Tenants' application-*

I find the tenant submitted insufficient evidence to establish that they left personal property of any value in the rental unit, as I find that the evidence supports that the tenants vacated the rental unit with all their property they wished to take.

The landlords have stated that the tenants could make arrangements to retrieve the box of photographs, and I direct the parties to come to a mutual agreement as to a date and time for which the exchange could occur.

### *Landlords' application-*

As to the landlords claim for unpaid rent for January, under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

I find that the tenants owed rent for the month of January 2014, under the terms of the tenancy agreement, and did not pay, resulting in the issuance of a 10 Day Notice.

I therefore find the landlords are entitled to a monetary award of \$750 for unpaid rent for January 2014.

As to the remaining claims of the landlords for cleaning and carpet cleaning, a key component in establishing a claim for damage, such as for cleaning, is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections.

In the circumstances before me the landlords failed to meet their obligation under of the Act of conducting a move-in inspection of the rental unit and completing the inspection report. I therefore had no evidence with which to compare the state of the rental unit at the end of the tenancy as to the beginning of the tenancy.

I also took into account that the landlords supplied no proof that they have incurred any expenses, such as with invoices, receipts, or cancelled cheques, with is the third step of their burden of proof, with the exception of a landfill receipt; however I ultimately did not consider this document due to the lack of proof supplied by the landlords that the tenants had left the rental unit in a state worse than at the beginning of the tenancy.

I therefore find the landlords have submitted insufficient evidence to prove their claim for cleaning and carpet cleaning for \$292, and dismiss their request, without leave to reapply.

As to the landlords' request for \$375 for a security deposit, the tenancy agreement shows that a security deposit of \$375 was paid at the beginning of the tenancy, along with a pet damage deposit of \$50. I therefore decline to award the landlords another security deposit, as the security deposit is held in trust for tenants during the tenancy, and must be dealt with in accordance with section 38 of the Act.

The landlords are therefore not entitled to receive another security deposit, only to have me order that they return the security deposit as the tenancy has concluded.

As I have found at least partial merit to the landlords' application, I award them recovery of the filing fee of \$50.

Due to the above finding, I therefore find that landlords has proven that they are entitled to a monetary award of \$800, comprised of unpaid rent of \$750 for January 2014, and the filing fee for their application of \$50.

### Conclusion

For the reasons stated above, the tenants' application is dismissed, without leave to reapply.

The landlords' application is partially granted.

At the landlords' request on their application, I direct them to retain the tenants' security deposit of \$375 and their pet damage deposit of \$50 in partial satisfaction of their monetary award of \$800 and I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$375, which I have enclosed with the landlords' Decision.

Should the tenants fail to pay the landlords this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 11, 2014

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Residential Tenancy Branch

